

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
THE REPUBLIC OF RWANDA,	:	07 Civ. 7663 (JSR)
	:	
Plaintiff,	:	
	:	
-against-	:	<u>DECLARATION</u>
	:	
JUSEPH J. FERONE,	:	
FERONE & FERONE	:	
333 S. HEALEY AVENUE CORP.,	:	
	:	
Defendants.	:	
-----X	:	

DAVID B. WOLF, declares and states:

1. I am a partner at the firm Cowan DeBaets Abrahams & Sheppard LLP, attorneys for the plaintiff The Republic of Rwanda in the above action and submit this declaration in support of plaintiff's motion for an award of attorneys' fees against defendants and their attorney Alfred A. Delicata under 28 U.S.C. § 1927 and under the Court's inherent power.

2. Attached hereto as Exhibit "A" is a true copy of the transcript of the conference before the Court on September 6, 2007.

3. Attached hereto as Exhibit "B" is a true copy of my firm's invoice to the plaintiff dated September 30, 2007 which includes the period from September 6, 2007, the date of the hearing on the Order to Show Cause, through September 24, 2007, when defendants' reply affirmation was received. The fees for that work, including time spent by myself and by my associate Alexis N. Mueller, amount to \$3467.50. At the time

of the submission of plaintiff's reply papers on this motion, we will provide copies of the invoices of my colleague Robert F. Van Lierop and of myself for the work on plaintiff's behalf in connection with the instant motion.

4. Attached hereto as Exhibit "C" is a true copy of my curriculum vitae.

Dated: New York, New York

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 18, 2007

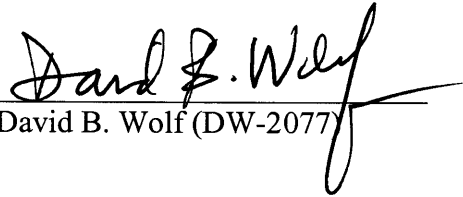

David B. Wolf (DW-2077)

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 THE REPUBLIC OF RWANDA,

4 Petitioner,

5 v.

07 Civ. 7663 (JSR)

6 JOSEPH J. FERONE, et al.,

Conference

7 Respondent

8 -----x

9 New York, N.Y.
9 September 6, 2007
10 4:30 p.m.

11 Before:

12 HON. JED S. RAKOFF

13 District Judge

14 APPEARANCES

15
16 COWAN DeBAETS ABRAHAMS & SHEPPARD LLC
17 Attorneys for Plaintiff

17 41 Madison Avenue, 34th floor
18 New York, New York 10010
18 (212) 974-7474

19 BY: DAVID B. WOLF, ESQ.
19 ROBERT F. VAN LIEROP, ESQ.

20
21 ALFRED A. DELICATA, ESQ.

21 Attorney for Defendants
22 484 White Plains Road
22 Eastchester, New York 10709
23 (914) 337-8080

24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

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(Case called)

2 THE CLERK: Counsel, please state your name for the
3 record.

4 MR. WOLF: David Wolf for the plaintiff, your Honor.

5 MR. VAN LIEROP: Robert Van Lierop for the plaintiff,
6 your Honor.

7 MR. DELICATA: Alfred Delicata for the defendants,
8 your Honor.

9 THE COURT: Good afternoon. We are here on an order

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10 to show cause. The Republic of Rwanda says it entered into a
 11 contract of sale with one of the defendants, 333 South Healy
 12 Avenue Corporation, provided that plaintiff would execute a
 13 deed and transfer document which would be held in escrow, and
 14 if after three years defendant had not received certain
 15 approvals, the documents would be returned to plaintiff.

16 Plaintiff says that it executed the deed and transfer
 17 documents in February 2004 but at the end of the three-year
 18 period the defendant had not obtained the necessary approvals,
 19 but their attorney, which is the co-defendant Ferone & Ferone
 20 and Joseph J. Ferone, Esq., refused to return the deed and
 21 transfer of documents. They are asking for an order to compel
 22 that return.

23 Let me hear first from defense counsel.

24 MR. DELICATA: Your Honor, I think that the facts are
 25 as you stated. I just have a problem with the contract and the
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1 interpretation of the three-year period. That would be the
 2 basis of any defense going forward at this time. We don't
 3 agree that the three-year period is a hard and fast three-year
 4 rule but that the three-year period is subject to
 5 interpretation. That's basically how we are proceeding.

6 THE COURT: I have here the contract. What do you
 7 think is the relevant provision?

8 MR. DELICATA: Judge, paragraph 38, the last sentence,
 9 the first part of the last sentence.

10 THE COURT: Hang on just one second. Paragraph 38:
 11 "Seller is in the process of obtaining a subdivision
 12 of the property located at 333 South Healy Avenue as Peritech's
 13 subdivision plan. At the time of closing herein, purchaser
 14 shall execute a deed and all necessary transfer documents to
 15 convey lot 60A to seller herein. Said deed and transfer
 16 documents shall be held in escrow by the seller's attorney and
 17 will be duly recorded upon said approval of said subdivision.

18 "Seller shall have three years from the closing of
 19 title to obtain subdivision approval. Purchaser will execute
 20 all necessary papers and applications required in the Town of
 21 Greenburgh or any other municipal board owner to process the
 22 existent subdivision and/or any papers that must be filed. All
 23 costs shall be borne by seller.

24 "Purchaser agrees not to object, oppose, or take any
 25 unfavorable position in any proceeding conducted by the Town of
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1 Greenburgh or municipal boards in relation to the sought-after
 2 subdivision. In the event the subdivision is not approved, the
 3 deed of transfer documents for the subdivision parcel shall be
 4 returned to purchaser and no further action taken or required."

5 How do you interpret that?

6 MR. DELICATA: Your Honor, if I could direct your
 7 attention to the last sentence of the paragraph that you just
 8 cited, "In the event the subdivision is not approved." My
 9 clients had an application pending up until the time that the
 10 Republic of Rwanda submitted correspondence to the deputy town
 11 attorney, thereby pulling the application.

12 Although the subdivision approval was not granted
 13 within the three-year period that's stated in this contract,
 14 your Honor, we feel that based on the tremendous amount of

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15 money, time, and expenditure that my client put forth on this
 16 matter, it outweighs this three-year milestone.

17 Our contention, Judge, is that the three years was in
 18 here just to be a milestone or a mile marker to keep the
 19 parties moving. My client had a pending application with the
 20 Town of Greenburgh --

21 THE COURT: I'm not sure I understand. The operative
 22 sentence so far as the three years is, "Seller shall have three
 23 years from the closing of title to obtain subdivision
 24 approval." It doesn't say seller shall have roughly three
 25 years. It doesn't say seller shall consider three years a

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1 marker at which time it had better get its act together. It
 2 doesn't say by the word "shall" we mean maybe or hopefully. It
 3 doesn't say that by the word "three" we mean three or four or
 4 five or six.

5 Where is the ambiguity?

6 MR. DELICATA: Judge, our position is that is
 7 ambiguous because the subdivision was not not approved. We are
 8 asserting, Judge, that there is a difference between a denial
 9 and a nonapproval. We did not transfer this lot in the effort
 10 to not get a subdivision. If we didn't get a subdivision, if
 11 the subdivision was denied, then obviously we would be more
 12 than happy to transfer this lot, which has tremendous value of
 13 its own and on its own right.

14 THE COURT: It doesn't say in the event of denial. It
 15 says, "In the event the subdivision is not approved, the deed
 16 and transfer document for the subdivision parcel shall be
 17 returned to purchaser with no further action taken or
 18 required."

19 It doesn't say in the event the subdivision is denied.
 20 It doesn't say in the event the subdivision is not approved but
 21 we've spent a lot of time and energy. It doesn't say that in
 22 the event the subdivision is not approved the deed and transfer
 23 document for the subdivision parcel may or may not be returned
 24 to purchaser at the option of the seller.

25 Where do you see any ambiguity here?

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1 MR. DELICATA: Respectfully, Judge, I understand your
 2 position.

3 THE COURT: It's not a position. I just thought I
 4 learned in school in like about the second grade that "shall"
 5 means shall, it doesn't mean may; that "three" means three,
 6 doesn't mean four; that not proved is not the equivalent of
 7 denied. Was my second grade teacher deficient?

8 MR. DELICATA: Probably not, your Honor. My point is
 9 that "not approved" to my clients signifies something other
 10 than the time elapsed. We are asserting that "not approved"
 11 indicates that the matter was heard by the town board, the
 12 matter was passed on by the town board, and it was denied.

13 THE COURT: Do you have the deed and transfer
 14 documents with you?

15 MR. DELICATA: No, I do not, your Honor.

16 THE COURT: Where are they?

17 MR. DELICATA: In my office.

18 THE COURT: Is there any reason you cannot deliver
 19 that to the plaintiff before the close of business on Friday?

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20 MR. DELICATA: Probably not, your Honor. Probably by
21 Saturday would not be a problem. I can get back to my office
22 today, place them in overnight courier.

23 THE COURT: I will give you until the close of
24 business Monday to deliver them. As I said, they need to
25 receive them through some effective means by 5 p.m. on Monday.

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1 You of course are free to appeal this ruling. But short of any
2 appeal, any failure to comply with this order will be deemed
3 contempt of court.

4 Anything else we need to take up today?

5 MR. DELICATA: Judge, I would like to be heard on the
6 record that it was my understanding that this matter was on for
7 a preliminary conference today and that you were going to set a
8 date for an order to show cause, our answering papers to be
9 submitted. I was not coming down here today, your Honor,
10 respectfully, to argue the merits of plaintiff's position
11 without --

12 THE COURT: You haven't provided any basis for why it
13 would be a provident use of my time to have papers, nor do I
14 understand how you got that understanding. This was an order
15 to show cause. Rather than issuing it ex parte, without
16 hearing from counsel for the defendants, I told counsel for the
17 plaintiff in no uncertain terms that I wanted to hear from the
18 other side before I started signing their proposed order.

19 Now I have heard from the other side. What is it you
20 think that you would put into papers that you haven't said here
21 today?

22 MR. DELICATA: Judge, I would like to have an
23 opportunity to ferret out the jurisdictional basis as part of
24 the complaint for the order to show cause. Also, I would like
25 to cross-move to seek declaratory judgment in this matter.

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1 THE COURT: You can make any cross-motion you want,
2 but we are not going to hold things up for that. This sounds
3 like a delaying tactic if I ever heard one.

4 What is your claim with respect to jurisdiction, the
5 plaintiff here being a sovereign foreign nation and therefore a
6 classic litigant in these courts?

7 MR. DELICATA: Your Honor, again, I didn't have an
8 opportunity to ferret out all the claims or issues I would like
9 to. We were down here on a preliminary conference. I was
10 prepared to argue --

11 THE COURT: No, you weren't down here on a preliminary
12 conference. You are here instead of, as the law would have
13 permitted me, instead of my signing an order to show cause in
14 your absence, ex parte, requiring you to show cause why the
15 relief that they have requested on an emergency expedited basis
16 should not be granted. I said to them to get you down here so
17 that you can tell me why they are wrong. You haven't given me
18 any reason why they are wrong.

19 But I'll give you the following option. If you want
20 to put in papers, then by Monday at 5 p.m. you need to deliver
21 the deed and transfer documents to the Court, and I will hold
22 them in escrow until I have resolved whatever you want to
23 present to me in writing.

24 I think the simplest thing to do is send them directly

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25 to my chambers, and then I will give them to the clerk of the
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1 court to hold in escrow. I'm not going to hold them
2 personally. I'm going to give them to the clerk of the court.
3 That way I can make sure that it is properly accounted for.
4 Arrange for some sort of service or personally, however you
5 prefer to do it, as long as I have it by 5 p.m. on Monday.
6 Then, when do you want to put in your papers?
7 MR. DELICATA: Two weeks, your Honor.
8 THE COURT: This is not rocket science. What about
9 the situation would take you two weeks?
10 MR. DELICATA: Your Honor, if this is going to be the
11 forum for this matter --
12 THE COURT: If I had signed the order to show cause,
13 under the federal rules it would be returnable maximum ten
14 days, and it could be much shorten that. I'm happy to give you
15 a week, but I'm not happy to give you two weeks.
16 Your papers should be served and filed by -- today is
17 Thursday. I'll give you to Friday of next week. That's
18 September 14th. I assume plaintiff's counsel can get their
19 answering papers by a week after that.
20 MR. WOLF: Absolutely, sir, perhaps earlier.
21 THE COURT: I want to set a date certain. If you want
22 an earlier date, tell me.
23 MR. WOLF: We will have them to you by the following
24 Wednesday, your Honor.
25 THE COURT: That would be the 19th. If there are any
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1 reply papers, they need to be served by the 21st. I'm not sure
2 I'm going to need oral argument. Let me look at the papers. I
3 may be able to decide it then on the papers. If I need further
4 oral argument, I'll reach out to counsel jointly and we'll set
5 up an oral argument. Certainly I'm going to resolve this one
6 way or another by September 28th, hopefully sooner.
7 Anything else we need to take up today?
8 MR. WOLF: No, your Honor.
9 MR. DELICATA: No. Thank you, your Honor.
10 THE COURT: Thanks very much.
11 (Adjourned)
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EXHIBIT B

Cowan, DeBaets, Abrahams & Sheppard LLP

Attorneys at Law
 41 Madison Avenue, New York, NY 10010
 Tel: (212) 974-7474
 Fax: (212) 974-8474
 Web: www.cdas.com
 E-Mail: cdas@cdas.com

Bill Date: September 30, 2007
 Bill # 35011
 Client # 04905 - 00001

Republic of Rwanda
 H.E. Mr. Joseph Nsengimana
 Ambassador/Permanent Representative
 Permanent Mission of Republic of Rwanda to the United
 Nations
 124 East 39th Street
 New York, NY 10016

RE:

FOR PROFESSIONAL SERVICES RENDERED			<u>Hrs.</u>	<u>Rate</u>	<u>Amount</u>
08/17/07	ANM	Research regarding contractual provisions, mutual mistake and ambiguity in 333Corp contract. Summary of findings.	2.40	125	300.00
08/21/07	DBW	Conference with RVL.	1.00	425	425.00
08/23/07	DBW	Telephone conference with RVL; review documents.	0.80	425	340.00
08/25/07	DBW	Telephone call with RVL.	0.30	425	127.50
08/27/07	DBW	Affidavit; complaint; review documents.	3.80	425	1,615.00
08/28/07	DBW	Court papers; filing; conference with Judge; letter to Ferone; telephone conference with Ferone.	5.80	425	2,465.00
08/31/07	DBW	Conference with TMB.	0.30	425	127.50
09/06/07	DBW	Preparation for and attendance at Court hearing on motion.	3.50	425	1,487.50
09/13/07	DBW	Telephone conference with RVL; review Delicata letter to court.	0.30	425	127.50
09/17/07	DBW	Defendant's motion papers; conference with RVL; conference with ANM.	2.30	425	977.50
09/18/07	ANM	Further research regarding contractual provisions, mutual mistake and ambiguity in 333Corp contract. Finalized summary of findings. Meeting regarding same.	2.80	125	350.00
09/19/07	ANM	Revisions to Memorandum of Law in further support of the order to show cause and in opposition to the cross-motion in 333Corp. Matter.	0.80	125	100.00
09/24/07	DBW	Defendants' reply affirmation; letter to Judge	1.00	425	425.00
09/26/07	DBW	Telephone call with RVL.	0.10	425	42.50
TOTAL FEES FOR THIS MATTER					\$8,910.00

DISBURSEMENTS

08/28/07 U.S. District Court Southern District of New York re: Republic of Rwanda. 350.00

Gowan, DeBaets, Abrahams & Sheppard LLP

Client # 04905 - 00001

Bill# 35011

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TOTAL DISBURSEMENTS FOR THIS MATTER**\$350.00****SUMMARY OF CHARGES ON THIS BILL** through September 30, 2007

<u>Init.</u>	<u>Name</u>	<u>Hrs.</u>	<u>Rate</u>	<u>Amount</u>
ANM		6.00	125	\$750.00
DBW		19.20	425	\$8,160.00
	Total fees	25.20		\$8,910.00
	Total disbursements			\$350.00
	Total charges for this bill			\$9,260.00
	Net current charges			\$9,260.00
	Less prepaid cash applied			\$8,000.00
	Net charges due			\$1,260.00
	TOTAL BALANCE NOW DUE			\$1,260.00

EXHIBIT C

DAVID B. WOLF

Cowan DeBaets Abrahams & Sheppard LLP
41 Madison Avenue – 34th Floor
New York, New York 10010
(212) 974-7474
(212) 974-8474 (fax)
E-mail: dwolf@cdas.com

Employment History

Partner
Cowan, DeBaets, Abrahams & Sheppard LLP
New York, New York

Partner and head of litigation at this firm that for many years has represented clients in the media, intellectual property, and entertainment areas.

Litigation Counsel/Associate	June 1994-December 1997
General Counsel	
Time Inc.	
New York, New York	

Started the in-house litigation practice at Time Inc., handling cases in copyright, libel, contract, and other areas. Handled all aspects of the cases, including discovery, motion practice, trials, and appeals. Significant results include victory in a copyright jury trial for *Sports Illustrated* in Miami federal court, victory in a landmark copyright decision concerning attorney's fees in the Eleventh Circuit Court of Appeals, and successful results in other matters.

Partner	January 1980-June 1994
Walter, Conston, Alexander	(Partner since 1982)
& Green, P.C.	
New York, New York	

Head of the Intellectual Property Department and a litigation partner at this international law firm.

Concentrating in copyright, trademark, libel, and contract matters, I handled all aspects of litigations, including trials and appeals. In addition to intellectual property cases, I handled general commercial litigation. My practice involved significant representation of clients overseas, particularly in Europe.

Significant results included handling several cases involving the copyright protection of maps, including representing Langenscheidt, Rand McNally, and Hammond as amici curiae in the successful appeal of the *Mason v. Montgomery Data* copyright infringement case before the U.S. Court of Appeals for the Fifth Circuit (which also quoted from my article on the subject), won a landmark case in the use of offers of judgment in copyright cases in *Jordan v. Time Inc.* in the Eleventh Circuit, and wrote the winning amicus brief in the Southern District of New York in the test case on electronic publishing, *Random House v. Rosetta*.

Education

B.A. Yale University, 1967

Major: History, the Arts, and Letters

Magna cum laude, Phi Beta Kappa

M.Phil. Yale University, 1971

Completed all requirements for the PhD, except the thesis, in Comparative Literature.

J.D. University of Pennsylvania Law School, 1974

Associate Editor, Law Review

LL.M. New York University Law School, 1996

Trade Regulation (primarily Intellectual Property)

Bar Admissions

New York, 1975

S.D.N.Y., E.D.N.Y., Second Circuit, and other federal courts

Publications

“New Landscape in the Copyright Protection for Maps: *Mason v. Montgomery Data, Inc.*,” 40 Journal of the Copyright Society 401 (1993).

“Is There Any Copyright Protection for Maps After Feist?,” 39 Journal of the Copyright Society 224 (1992), quoted in *Mason v. Montgomery Data, Inc.*, 967 F.2d 135 (5th Cir. 1992).

•
• “‘Effective Protection Against Unfair Competition’ Under Section 44 of the Lanham Act,” 82 Trademark Reporter 33 (1992).

Memberships

Association of the Bar of the City of New York
Committee on Copyright and Literary Property, +-
1991-94, 1995-2001, 2005-

Chair, 1998-2001

Chair, Subcommittee on Proposed UCC 2B on Licenses of
Information and Software Contracts, 1998

New York State Bar Association
Committee on Media Law, 1998-

The Copyright Society of the U.S.A.
Trustee, 1994-96, 2001-04

Teaching and Speaking

Adjunct Professor (Copyright Litigation), Fordham Law School, 2002-

I have been a speaker on copyright and related issues at bar association, industry, and other groups.

PROOF OF SERVICE

I am employed in the County of New York, State of New York. I am over the age of 18 and not a party to the within action; my business address is 41 Madison Avenue, 34th Floor, New York, New York 10014.

On **October 19, 2007**, I caused to be served, via e-mail and Federal Express, the following:

NOTICE OF MOTION;

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN
AWARD OF ATTORNEYS' FEES;**

DECLARATION OF DAVID B. WOLF; and

DECLARATION OF ROBERT F. VAN LIEROP

addressed as follows:

**Alfred A. Delicata, Esq.
484 White Plains Road
Eastchester, NY 10709
italdel@aol.com**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at New York, New York on this 19th day of October, 2007.


Deborah Mays